REMARKS

Reconsideration and allowance of the above-identified patent application are respectfully requested. Claims 1-29 remain pending, wherein claims 1, 12, 16, and 25 have been amended.[1]

The Office Action rejected all of the independent claims (1, 12, 16, and 25) under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,937,331 to Kalluri et al. ("*Kalluri*") in view of U.S. Patent No. 5,802,592 Chess et al. ("*Chess*"). The remaining dependent claims were rejected either as allegedly being unpatentable over *Kalluri* in view of *Chess* and/or further in view of U.S. Patent No 5,903,732 to Reed et al. ("*Reed*"). [2] These grounds of rejection are respectfully traversed.

Applicants' invention, as claimed for example in the various independent claims, relates to restoring corrupted program instructions at a client system by checking the validity of the program instructions to determine whether the program instructions include a corrupted block or portion so as to render the corrupted block or portion unreadable as intended. Upon or after determining that there is a corrupted block or portion of the program instructions, the client system connects to or requests replacement program instructions for the corrupted block or portion from a server system. The client then receives the replacement program instructions from the server system and replaces the corrupted program instructions with the replacement program instructions received form the server system.

In order to establish a *prima facie* case of obviousness, "the prior art reference (or references when combined) must teach or suggest <u>all</u> the claim limitations." MPEP § 2143 (emphasis added). During examination, the pending claims are given their broadest reasonable interpretation, i.e., they are interpreted as broadly as their terms reasonably allow, consistent with the specification. MPEP §§ 2111 & 2111.01.

Applicants respectfully submit that the combination of *Kalluri*, *Chess*, and/or *Reed* does not render independent claims 1, 12, 16, and 25 unpatentable for at least the reason that the combination does not disclose or suggest all of the elements of these independent claims. For

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[1] Although Applicants disagree with the Office Action's Advisory Action's interpretation of what the alleged prior art discloses and/or suggest, in the interest of expediting prosecution Applicants have amended these claims for clarification of what was already express or implied from the previous versions. Accordingly, these amendments are not meant to limit or otherwise narrow the scope of the present invention.

[2] Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to do so in the future. Accordingly, any arguments made herein should not be construed as acquiescing to any prior art status or asserted teachings of the cited art.

example, the combination of *Kalluri, Chess,* and/or *Reed* does not disclose or suggest that upon or after determining that there is a corrupted block or portion of the program instructions: the client system connects to or requests replacement program instructions for the corrupted block or portion from the server system; receives replacement program instructions from the server system; and replaces the corrupted program instructions with the replacement program instructions received from the server system.

Kalluri discloses a protocol and system for transmitting triggers from a remote network and for controlling interactive program content at a broadcast station. The remote network inserts trigger commands (e.g., continue, pause, stop, play, time, etc.) within the vertical blanking intervals (VBIs) of a television signal to control the loading and playing of an interactive program at a broadcast station. (*See e.g.,* col. 5, ll. 18-30 and Abstract). The trigger commands are then extracted and provided to a server (i.e., the interactive program source), which controls the loading or playing of an interactive program in accordance with the trigger commands. (*See e.g.,* col. 2, ll. 44-53). The protocol associated with the trigger commands allows redundant or repeated commands for ensuring that the interactive program is controlled correctly, even in the event that an original command was not received or was corrupted in the transmission. (*See e.g.,* col. 3, ll. 28-35, col. 5, ll. 31-33, and Abstract). If a redundant trigger command is received by the broadcast station and the original command was not properly received, the interactive program source or server enters an error recovery state to determine the appropriate action for the interactive program source. (*See e.g.,* col. 3, ll. 35-41, col. 5, ll. 33-42, and Abstract).

Although *Kalluri* provides a redundancy mechanism for recovery from non-received or corrupted trigger commands, *Kalluri* does not disclose or suggest that *upon or after* determining that there is a corrupted trigger command *connecting to or requesting from a server* the redundant trigger commands. Nevertheless, the Advisory Action states that the alleged prior art "sugget[s]" that if a corrupted portion of program instructions is detected, then a server is connected to for requesting replacement instructions and then replacing them. The Advisory Action further states that "*Kalluri* does in fact show an error determination in trigger commands; whether this is a different approach to determining an error is not relevant to the fact that an error is nevertheless determined in the command instructions."

Applicants agree with the Examiner that the issue is not *how Kalluri* determines a trigger command is in error. Applicants respectfully submit, however, that how *Kalluri* determines the corruption of a trigger command is relevant for *what Kalluri* does not disclose or suggest once the error is determined. For example, *Kalluri* simply discloses that based on the protocol used to transmit the trigger control commands from the remote network, the broadcast station periodically receives redundant or repeated trigger commands *without connecting to or requesting* such redundancy from the remote network. Further, *Kalluri* discloses that a primary way for determining the corruption of a trigger command is by receiving the redundant trigger command before the original one; and thus *before the determination* that the trigger command is corrupt. (*See e.g.*, Col. 6, ll. 39-49, Col. 9, ll. 11-38). Because *Kalluri* receives the redundancy without connecting to or requesting such redundancy from a server, and because the redundancy is received regardless of any determination that the original trigger commands were corrupt, *Kalluri* cannot possibly disclose or suggest Applicants' independent claims. In particular, *Kalluri* does not disclose or suggest that *upon or after determining* there is a corrupted block or portion of program instructions, *connecting to or requesting* replacement program instructions for the corrupted block or portion from a server system, receiving replacement program instructions for the corrupted block or portion from the server system, and replacing the corrupted program instructions with the replacement program instructions received from the server system, as recited, *inter alia*, in Applicants' independent claims.

Recognizing some of the deficiencies of *Kalluri*, the Office Action cites *Chess*. *Chess* discloses a system and method for protecting the integrity of alterable ROM using digital signatures. The Office Action relies on *Chess* as allegedly disclosing replacing an actual program if it is corrupted to correct instructions.[3] Although *Chess* discloses that the alterable ROM can be corrected in the event that it becomes corrupted, *Chess* does not disclose or suggest that upon or after such determination it connects to or requests replacement program instructions from a server. Instead, *Chess* simply discloses that a user may examine and optionally replace the contents of the alterable ROM without any mention of connecting to or requesting the replacement of the corrupted contents from a server. (*See e.g.,* col. 3, ll. 3-16). Accordingly,

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[3] Applicants respectfully submit that the Office Action's motivation for combining *Kalluri* and *Chess* is insufficient. Accordingly, Applicants reserve the right to this and other arguments in the future, and any arguments made herein should not be construed as relinquishing any other arguments regarding the deficiencies within the cited art.

Chess cannot possibly rectify the above-identified deficiencies of *Kalluri* with regard to independent claims 1, 12, 16, and 25; and therefore the combination of *Kalluri* and *Chess* does not disclose or suggest all of the features of these claims.

Recognizing some of the deficiencies of *Kalluri* and *Chess*, the Office Action cites *Reed*. *Reed* discloses a trusted gateway agent for web server programs. As previously mentioned, the Office Action relies on *Reed* as allegedly disclosing features within various dependent claims. *Reed*, however, does not rectify the above-identified deficiencies of *Kalluri* and *Chess* with regard to independent claims 1, 12, 16, and 25; and therefore the combination of *Kalluri*, *Chess*, and *Reed* does not disclose or suggest all of the features of these claims.

Based on at least the foregoing reasons, therefore, Applicants respectfully submit that the cited prior art fails to make obvious Applicants' invention, as claimed for example, in independent claims 1, 12, 16, and 25. Applicants note for the record that the remarks above render the remaining rejections of record for the independent and dependent claims moot, and thus addressing individual rejections or assertion with respect to the teachings of the cited art is unnecessary at the present time, but may be undertaken in the future if necessary or desirable, and Applicants reserve the right to do so.
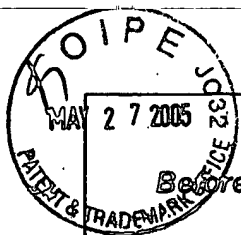
All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance, and notice to this effect is earnestly solicited. Should any question arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that he be contacted at +1.801.533.9800.

Dated this 27th day of May, 2005.

Respectfully submitted,

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Advisory Action *Before the Filing of an Appeal Brief*	Application No. 09/851,402	Applicant(s) BRITT ET AL.
	Examiner Steven P Sax	Art Unit 2174	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>05 April 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐   The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒   The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) a set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>the combination of prior art, as explained in the rejection, would in fact suggest that if a corrupted portion of program instructions is detected, then connecting to a server to request replacement instructions and then replacing them. Kalluri does in fact show an error determination in trigger commands; whether this is a different approach to determining an error is not relevant to the fact that an error is nevertheless determined in the command instructions. The combination of art is proper with the motivation of efficiently correcting the instructions.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

U.S. Patent and Trademark Office